

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
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Person To Contact:

, ID No.

Telephone Number:

RE:

Refer Reply To:  
CC:PSI:B04  
PLR-135338-10  
Date:  
January 20, 2011

### Legend

Decedent  
Executor  
Trust  
Date 1  
Date 2  
Date 3  
Date 4  
Accountant

Dear :

This letter responds to a letter from your authorized representative dated August 17, 2010 requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to make a protective alternate valuation election under § 2032 of the Internal Revenue Code.

The facts and representations submitted are summarized as follows:

On Date 1, Decedent established Trust, a revocable trust.

Decedent died on Date 2. Decedent's will provides that upon his death, all of Decedent's property is to be distributed to the trustee of Trust. The trustee is to add the property to the trust principal and hold, administer, and distribute the property in accordance with the provisions of Trust. Trust became irrevocable when Decedent died.

Executor, the executor of Decedent's estate, retained Accountant to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The

return was prepared without making the alternate valuation election under § 2032. Accountant failed to advise Executor that a protective alternate valuation election could be made in the event that it might be needed. On Date 3, a date prior to the due date of the return (including extensions actually granted), Executor filed the Form 706 without making the protective alternate valuation election.

On Date 4, a date that is more than 1 year after the due date of the return (including extensions actually granted), Executor filed a supplemental Form 706 making a protective alternate valuation election.

You have requested the following ruling:

The estate of Decedent will be granted an extension of time until Date 4, the date when the supplemental Form 706 was filed, under § 301.9100-3 to make a protective alternate valuation election under § 2032.

#### LAW AND ANALYSIS

Section 2032(a) provides, in part, that the value of the gross estate may be determined, if the executor so elects, by valuing all the property included in the gross estate as follows:

- (1) In the case of property distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date of distribution, sale, exchange, or other disposition.
- (2) In the case of property not distributed, sold, exchanged, or otherwise disposed of, within 6 months after the decedent's death such property shall be valued as of the date 6 months after the decedent's death.

Section 2032(c) provides that no election may be made under § 2032 with respect to an estate unless the election will decrease: (1) the value of the gross estate; and (2) the sum of the tax imposed under chapter 11 and the tax imposed by chapter 13 with respect to property includible in the decedent's gross estate (reduced by credits allowable against such taxes).

Section 2032(d)(1) provides that an election under § 2032 shall be made by the executor on the return of tax imposed by § 2001. Under § 2032(d)(2), no election may be made under § 2032 if the return is filed more than 1 year after the time prescribed by law (including extensions) for filing the return.

Section 20.2032-1(b)(2) of the Estate Tax Regulations provides that if, based on the return of tax as filed, use of the alternate valuation method would not result in a decrease in both the value of the gross estate and the sum (reduced by allowable

credits) of the estate tax and the generation-skipping transfer tax liability payable by reason of the decedent's death with respect to the property includible in the decedent's gross estate, a protective election may be made to use the alternate valuation method if it is subsequently determined that such a decrease would occur. A protective election is made on the return of tax imposed by § 2001. The protective election is irrevocable as of the due date of the return (including extensions of time actually granted). The protective election becomes effective on the date on which it is determined that use of the alternate valuation method would result in a decrease in both the value of the gross estate and in the sum (reduced by allowable credits) of the estate tax and generation-skipping transfer tax liability payable by reason of the decedent's death with respect to the property includible in the decedent's gross estate.

Section 20.2032-1(b)(3) provides that a request for an extension of time to make the election or a protective election pursuant to §§ 301.9100-1 and 301.9100-3 will not be granted unless the estate tax return is filed no later than 1 year after the due date of the return (including extensions of time actually granted).

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I, if the taxpayer demonstrates to the satisfaction of the Commissioner that the taxpayer has acted reasonably and in good faith, and granting relief will not prejudice the interests of the government.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-1(a).

Section 301.9100-2 provides an automatic extension of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-1 and § 301.9100-3 have been satisfied. The Form 706

was filed on Date 3, which is before the due date of the return (including extensions actually granted). Consequently, Executor is granted an extension of time to Date 4, the date the supplemental Form 706 was filed, to make the protective alternate valuation election under § 2032. A copy of this letter should be forwarded to the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center - Stop 82, Cincinnati, OH 45999.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Except as expressly provided herein, we express no opinion on the federal tax consequences of the transactions under the cited provisions or under any other provisions of the Code. Specifically, we express no opinion regarding whether the requirements of § 2032(c) have been satisfied.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Associate Chief Counsel  
Passthroughs & Special Industries

By: Lorraine E. Gardner, Senior Counsel  
Branch 4  
Office of the Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for § 6110 purposes  
Copy of this letter

cc: